

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

LLOYD T. ELDER, SR., )  
Plaintiff, )  
v. )  
JACKSON, )  
Defendant. )  
No. 2:20-cv-00271-JPH-DLP

## Order

Plaintiff Lloyd Elder's motion for a *Pavey* hearing, dkt. [20], is **denied** for the present. Such a hearing is necessary when there are factual disputes regarding the defendants' affirmative defense that the plaintiff failed to exhaust his available administrative remedies before filing this lawsuit. The Court has issued a schedule directing the development of this defense, directing the defendants to either (1) file a dispositive motion in support of the defense; (2) file a notice with the Court specifically identifying factual disputes that prevent resolution of the defense without a hearing; or (3) withdraw the affirmative defense. Dkt. 19. Until the exhaustion defense is developed further, the Court cannot determine whether a *Pavey* hearing will be necessary.

Mr. Elder also states in his motion that the defendants have not given him requested discovery. If Mr. Elder wants to ask the Court to order the defendants to provide requested discovery to him, he first must attempt to resolve any discovery dispute informally with counsel for the defendants. If he is unable to resolve his discovery issues informally, he may file a motion to compel in which he specifically describes the discovery he has requested and his attempts to obtain it.

**SO ORDERED.**

Date: 9/29/2020

James Patrick Hanlon

James Patrick Hanlon  
United States District Judge  
Southern District of Indiana

Distribution:

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